

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

---

ALEXANDRIA NICOLE TUCKER,

Cause No. CV 02-54-H-LBE

Plaintiff,

vs.

FINDINGS AND RECOMMENDATION  
OF U.S. MAGISTRATE JUDGE  
(Defendants' Second Motion  
to Dismiss)

RICK DAY, MIKE MAHONEY,  
JAMES WAGNER, MARWAN SABA,  
All in their individual, and/or  
official Capacities,

Defendants.

---

On March 14, 2006, the Defendants in this case filed their second motion to dismiss the case on the grounds that Plaintiff Alexandria Tucker is deceased.<sup>1</sup> Kris Elder of Victoria, British Columbia, having identified herself as the executor of Tucker's estate, she was personally served with a notice of suggestion of death on December 13, 2005. Ninety days have passed, and neither Elder nor anyone else has made an appearance in the action on Tucker's behalf. Pursuant to Fed. R. Civ. P. 25(a)(1), because no one has filed a motion for substitution, "the action shall be

---

<sup>1</sup> The procedural background to the motions to dismiss is explained in the Findings and Recommendation of October 25, 2005 (doc. 40).

dismissed as to the deceased party." The rule does not provide for dismissal with prejudice.

Based on the foregoing, the Court enters the following:

**RECOMMENDATION**

Defendants' second motion to dismiss (doc. 43) should be GRANTED and the case should be DISMISSED.

The Clerk of Court shall serve a copy of the Findings and Recommendation of the United States Magistrate Judge upon the Defendants. The Defendants are advised that, pursuant to 28 U.S.C. § 636, any objections to these findings must be filed or delivered to prison authorities for mailing within twenty (20) calendar days after the date on the certificate of mailing below, or objection is waived.

DATED this 28<sup>th</sup> day of April, 2006.

  
Leif B. Erickson  
United States Magistrate Judge

cc: Defense Counsel

Kris Elder  
1007 Empress Ave.  
Victoria, B.C. V8T 1P1  
Canada

FINDINGS AND RECOMMENDATION  
OF U.S. MAGISTRATE JUDGE  
(Defendants' Second Motion to Dismiss) / PAGE 2